

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

COMPASS, INC. and COMPASS RE NY, LLC,

Plaintiffs,

v.

REAL ESTATE BOARD OF NEW YORK, INC.,

Defendant.

Civil Action No. 1:21-cv-02195-AJN

Declaration of Eric Fanchiang

I, Eric Fanchiang, declare as follows:

1. I submit this declaration in support of Plaintiffs Compass, Inc. and Compass RE NY, LLC's Memorandum of Law in Opposition to Douglas Elliman, LLC's Motion for Attorney's Fees and Costs. My statement is based on facts and matters within my own knowledge and belief.

2. I am counsel with the law firm of Crowell & Moring, LLP and represent Compass, Inc. and Compass RE NY, LLC (collectively, "Compass") in all matters related to the above-captioned litigation.

3. On May 25, 2022, Compass served Douglas Elliman, LLC ("Douglas Elliman") with a Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action. *See* Declaration of Jessica T. Rosenberg ("Rosenberg Decl.") (ECF No. 98), Ex. A.

4. On June 24, 2022, Douglas Elliman served Non-Party Douglas Elliman, LLC's Responses & Objections to Plaintiffs' Subpoena to Produce Documents, Information or Objects

or to Permit Inspection of Premises in a Civil Action, and agreed to produce documents responsive to the first four requests. *See id.*, Ex. C.

5. Douglas Elliman and Compass met-and-conferred over these objections, as well as proposed custodians, and search terms for several months. During that time, Douglas Elliman never requested that Compass withdraw this subpoena or informed Compass that it felt the subpoena as a whole was improper. Douglas Elliman also never filed a motion to quash.

6. On November 3, 2022, my colleague, Marlee Santos of Crowell & Moring, LLP, emailed counsel for Douglas Elliman to accept Douglas Elliman's counterproposal on two outstanding search terms. I was copied on this correspondence. Ms. Santos also requested that Douglas Elliman "let us know if this is acceptable" and "advise" as to Douglas Elliman's position on the question of an additional custodian, Mr. Howard Lorber, President and CEO of Douglas Elliman. *Id.*, Ex. E, at 1.

7. Counsel for Douglas Elliman never responded to Ms. Santos's email. Douglas Elliman's last communication with Compass was an email sent to Ms. Santos on November 2, 2022. *Id.*, Ex. E, at 1. At no point did Douglas Elliman inform Compass that it was reviewing documents for production in November and December of 2022. Douglas Elliman ultimately did not produce any documents to Compass in this action.

8. On January 6, 2023, counsel for Douglas Elliman emailed a letter to Ms. Santos threatening to file a motion for attorney's fees under Federal Rule of Civil Procedure 45(d)(1). On January 10, 2023, Compass responded to Douglas Elliman's letter, refusing to pay any of Douglas Elliman's fees or costs, based, in part, on this Court's dismissal order, which denied an award of fees or costs to the Real Estate Board of New York, Inc. and NRT New York LLC d/b/a The Corcoran Group.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on February 14, 2023.

/s/ Eric Fanchiang
Eric Fanchiang